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Customized PTO/SB/21 (04-04)

TRANSMITTAL FORM (for all correspondence after initial filing)	Application #	10/617,134
	Confirmation #	1436
	Filing Date	July 11, 2003
	First Inventor	DESILETS
	Art Unit	3641
	Examiner	A. Felton
Total number of pages in this submission =		Docket # P07690US01/RFH

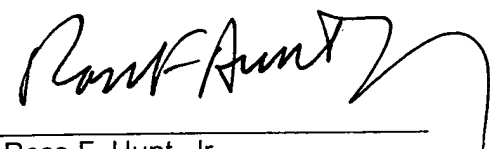
ENCLOSURES (check all that apply)	
<input checked="" type="checkbox"/> Fees calculated below <input checked="" type="checkbox"/> Response including Attachments A-D <input checked="" type="checkbox"/> After Final Amendment/Reply including Attachment(s) Extension of Time Petition	<input type="checkbox"/> Response to Missing Parts/Incomplete Appl. <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Terminal Disclaimer

FEES CALCULATION: For claims if required and/or other fees as shown below:					
	NOW	Previously Paid For	Present Extra	Rate	\$
<input checked="" type="checkbox"/> TOTAL CLAIMS	13	20	0	X \$ 50 =	
<input checked="" type="checkbox"/> INDEP. CLAIMS	2	3	0	X \$ 200 =	
TOTAL OF ABOVE CLAIMS FEES =					0
..... Reduction by 1/2 for small entity status of applicant					
SUBTOTAL =					0
..... Fee for extension of time (per attached Petition)					
..... Other fee for					
TOTAL OF ALL FEES =					0

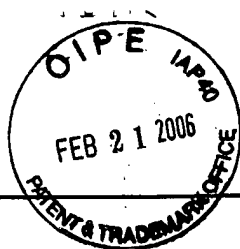
..... A CREDIT CARD PAYMENT FORM (PTO-2038) in the amount of \$0 is enclosed.

☒ The Commissioner is authorized to charge any fee, additional fee or extension fee due in connection herewith to Deposit Account No. 12-0555:
(1) if no payment or an insufficient payment is enclosed and a fee is due in connection herewith; or
(2) if no petition for extension of time is enclosed but an EOT is required - and in this event, applicant hereby petitions under 37 CFR 1.136(a) for an extension of time of as many months as are required to render this submission timely.

Date: February 21, 2006

By: 
Registration No.: 24,082

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RESPONSE	Application #	10/617,134
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	First Inventor	DESILETS
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R:

Responsive to the Office Action mailed on January 30, 2006, reconsideration of the action taken in the Office Action is respectfully solicited.

In the Office Action, the Examiner has taken the position that the "amendment filed on 11/17/2005 which amends all claims such that they are now drawn to a nonelected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP §821.03)." The Examiner further states that the "remaining claims are not readable on the elected invention because Applicant has elected carbon black powder as the energetic material in the response filed on 6/8/2005." The Examiner concludes that "the amendment is nonresponsive because it amends all the claims to include black powder as the energetic material."

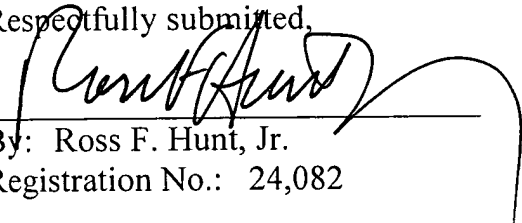
First, it is noted that there has been no requirement for restriction between "carbon black powder" as a first species and "black powder" as a further, different species, and certainly no election of "carbon black powder" as a species which excludes "black powder." In fact, the two terms are treated as the same thing in the specification as pointed out in the last response. In this regard, the specification uses both "carbon black powder" and "black powder" to refer to the same energetic material. For example, paragraph [0010] discusses Grade 7 "carbon black powder." This is actually a reference to Grade 7 "black powder," a well known product having a specific milspec. The specific milspec is MIL-P-223B. To the extent that "carbon black powder" is something

different from "black powder" there is no Grade 7 "carbon black powder." Thus, it is clear from this reference to Grade 7 that the intention in the application was to refer to black powder, and the change throughout, from "carbon black powder" to simply "black powder" was made to avoid any confusion regarding the use of the term "carbon black powder." Thus, "black powder" is not a non-elected species but is, in fact, the elected species. Accordingly, the amended claims are properly drawn to the elected invention and are not "now drawn to a nonelected invention" as contended by the Examiner.

Reconsideration of the current holding, and further and favorable action are respectfully solicited.

Respectfully submitted,

Date: February 21, 2006


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